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F A C S I M I L E

PLEASE DELIVER AS SOON AS POSSIBLE TO:

<u>RECIPIENT</u>	<u>COMPANY</u>	<u>FAX NO.</u>	<u>PHONE NO.</u>
Patricia S. Robinson, Esquire		(732) 560-0788	(732) 560-0788

Total number of pages including this page: : 16

FROM: Stephanie E. Farrell, Esquire  
PHONE: (609) 572-7408

FILE NO.: 51067.1

DATED: May 18, 2004

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MESSAGE: RE: SANTOSUOSSO V. NOVACARE

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☐ Original will not follow  
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FILE NO.: 51067.1

May 18, 2004

**VIA FACSIMILE & REGULAR MAIL**

Patricia S. Robinson, Esquire  
Collier Jacob & Mills, PC  
580 Howard Avenue  
Somerset, NJ 08873

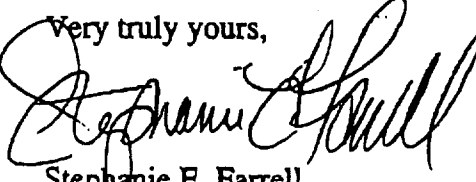
Re: Karen Santosuosso v. NovaCare, Select Medical Corp. and Joseph Derella  
Docket No. ATL-L-1470-04

Dear Ms. Robinson:

Per our discussion on this date, I am enclosing a copy of the complaint I have filed on behalf of Karen Santosuosso. Kindly advise whether you will accept service of same, and if so, please advise for whom you will agree to accept service.

Thank you.

Very truly yours,



Stephanie E. Farrell

SEF:bhs  
Enclosure

CPAC:461235.1

ATLANTIC CITY  
CHERRY HILL  
CAPE MAY COURT HOUSE  
PRINCETON  
NORTHFIELD

Russell L. Lichtenstein, Esquire

Stephanie E. Farrell, Esquire

COOPER LEVENSON APRIL NIEDELMAN & WAGENHEIM, PA

1125 Atlantic Avenue - 3rd Floor

Atlantic City, NJ 08401

(609) 344-3161

File No.: 51067.1

Attorneys for Plaintiff, Karen Santosuosso

KAREN SANTOSUOSSO

Plaintiff,:

v.

NOVACARE REHABILITATION, SELECT  
MEDICAL CORPORATION, JOSEPH  
DERELLA, individually, and JOHN DOES 1-10  
(FICTITIOUS NAMES, WHETHER THEY BE  
INDIVIDUALS, PARTNERSHIPS,  
CORPORATIONS OR OTHERWISE; PRESENT  
IDENTITIES UNKNOWN),

Defendants.:

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION

ATLANTIC COUNTY

DOCKET NO.: ATL-L-

Civil Action

COMPLAINT

Plaintiff, Karen Santosuosso, by way of complaint against the above-named defendants  
hereby states:

### PARTIES

1. Plaintiff, Karen Santosuosso, is an adult individual who resides at 6163 Falcon Run Road,  
Mays Landing, Atlantic County, New Jersey 08330.
2. Defendant, NovaCare Rehabilitation, is a division of Select Medical Corporation that  
operates clinics throughout the State of New Jersey, including Atlantic County. NovaCare  
Rehabilitation employs more than 50 employees.

3. Defendant, Select Medical Corporation, is a Delaware corporation with offices in Pennsylvania. It is subject to the jurisdiction of the State of New Jersey as a result of operating NovaCare facilities therein.
4. Defendant, Joseph Derella, is an adult individual who resides at 865 Carmel Road, Millville, Cumberland County, NJ 08332.

#### **FACTUAL BACKGROUND**

5. Plaintiff is a licensed Physical Therapist in the State of New Jersey.
6. In or about March of 1996, plaintiff was employed by Physical Therapy and Sports Services (hereinafter "PTSS") as a Center Manager for the Ventnor clinic when NovaCare purchased PTSS.
7. Plaintiff continued in her position as the Center Manager of the Ventnor clinic until in or about September of 2000, when Paul Martin, a licensed Physical Therapist who was the Clinical Operations Director (COD) at the time, promoted her to Center Manager/ Manager of Clinical Operations (MCO) overseeing clinics in Atlantic and Cape May Counties.
8. In or about the Spring of 2001, Paul Martin left his employ with NovaCare. He was replaced as COD by defendant Joseph Derella, who is a Certified Athletic Trainer.
9. In or about the Fall of 2001, defendant Joseph Derella decreased plaintiff's MCO area of responsibility by removing the Marmora clinic from her supervision. Without advertising for an MCO position, defendant Derella transferred Frank McBride, a licensed physical therapist into an MCO position and assigned him the Marmora clinic. Although Mr. McBride was less experienced than plaintiff, defendant Derella compensated Mr. McBride at a higher rate than plaintiff was compensated.

10. On or about October 14, 2002, plaintiff went out on maternity leave for the birth of her first child. She returned to work on March 3, 2003.
11. During her maternity leave, in or about February of 2003, plaintiff asked defendant Derella if it would be permissible upon her return for her to work in the office 32 to 35 hours per week and then do some work at home for up to 8 hours per week, doing such things as reports, reviews and catching up on paperwork.
12. On or about March 3, 2003, plaintiff's first day back to work, she was removed from her MCO position and replaced by Frank McBride. While her salary was not reduced when she was demoted from MCO to Center Manager of the Ventnor clinic, she was docked pay for hours that she worked at home instead of in the office even though she was an exempt employee who was not paid overtime when she was in the office for more than 40 hours per week. Further, although plaintiff's salary was not reduced when she was removed from the MCO position, Frank McBride was paid more for holding that position than plaintiff ever was.
13. On or about March 4, 2003, plaintiff attended a meeting with Frank McBride, her new MCO and defendant Derella to discuss the Ventnor clinic's decrease in volume and profits during plaintiff's maternity leave. Mr. McBride and defendant Derella asked plaintiff to "work her magic" to get the numbers back up. A number of factors contributed to the reduced volume and profits, including bad winter weather when many of the patients at the Ventnor clinic are elderly, the opening of competitor Shore Ortho Clinic and the loss of the contract between NovaCare and the Trump properties.

14. Despite these obstacles, plaintiff reorganized and marketed area doctors resulting in increased volume that almost doubled by July of 2003. Defendant Derella e-mailed plaintiff to thank her and comment on how good the numbers were.
15. In or about July of 2003, plaintiff learned that she was pregnant with her second child.
16. On or about September 2, 2003, because there was a meeting of all area employees scheduled for September 4, 2003 and her pregnancy was beginning to show, plaintiff e-mailed Mr. McBride and defendant Derella to advise them of her pregnancy. Mr. McBride responded with "congratulations," but defendant Derella did not respond.
17. On or about September 3, 2003, plaintiff received a phone call from defendant Derella wherein he congratulated her on her pregnancy and then inquired as to whether it was planned and advised plaintiff he wanted to meet with her after the area employees meeting on September 4, 2003.
18. Plaintiff met with defendant Derella as scheduled. At their meeting, two days after plaintiff had announced her pregnancy, defendant Derella advised plaintiff that she was being demoted to a staff physical therapist and being transferred to the Marmora Clinic effective September 8, 2003, or in the alternative, she could be terminated with 8 weeks severance pay. Plaintiff was advised that the reason for this was because of "grey areas" on her time sheet (though plaintiff was an exempt employee who was not even supposed to have to keep a time sheet), because of poor performance of the clinic (despite the fact that numbers were up) and because staff morale was down and three employees allegedly wanted to transfer out of the clinic. Defendant Derella indicated to plaintiff that he would advise her staff that it was plaintiff's decision to transfer because of her pregnancy and family obligations so she

could "save face". Plaintiff declined and told her staff the truth about the reasons she was given for being transferred.

19. Plaintiff was temporarily replaced as the Center Manager of the Ventnor clinic by Frank McBride, and ultimately the position was filled by another male who was apparently promised a Center Manager position a year earlier.
20. On or about September 8, 2003, plaintiff reported to work at the Marmora clinic where she was monitored closely without reason.
21. On or about September 12, 2003, plaintiff was terminated from her position after being accused of forgery.
22. Although all of the other staff members were presented with a paper to sign indicating that they did not commit the forgery, plaintiff was never presented with the document that was allegedly forged, and she was never presented with or given the opportunity to sign the paper indicating that she did not engage in forgery.
23. On or about September 13, 2003, plaintiff learned from a former fellow co-worker that defendants were alleging that plaintiff falsified a patient chart.

#### COUNT ONE

24. Plaintiff, Karen Santosuosso, repeats and incorporates the allegations contained in Paragraphs 1-21 as if set forth in full herein.
25. At the time of plaintiff's termination, defendant NovaCare employed more than 50 employees. Consequently, defendant NovaCare is subject to the provisions of the Family and Medical Leave Act, 29 U.S.C. §2601, *et seq.*, hereinafter "FMLA" and the New Jersey Family Leave Act, N.J.S.A. §34:11B-1, *et seq.*, hereinafter "FLA".

26. Plaintiff qualified for her prior leave from October 14, 2002 through March 3, 2003 under the FMLA and the FLA.

27. Defendants failed to place plaintiff in the same or an equivalent position upon her return to NovaCare.

28. Said failure is a direct violation of the FMLA and the FLA.

WHEREFORE, plaintiff, Karen Santosuosso, demands the following relief, jointly, severally and/or in the alternative, against all defendants; compensatory damages, punitive damages, attorneys fees and costs, interest and such other relief as the Court deems appropriate.

#### COUNT TWO

29. Plaintiff, Karen Santosuosso, repeats and incorporates the allegations contained in Paragraphs 1-21 and Count One as if set forth in full herein.

30. Plaintiff's demotion upon her return from leave was in retaliation for exercising her rights under the FMLA and FLA.

31. Said retaliation constitutes a violation of the provisions of the FMLA and the FLA.

WHEREFORE, plaintiff, Karen Santosuosso, demands the following relief, jointly, severally and/or in the alternative, against all defendants; compensatory damages, punitive damages, attorneys fees and costs, interest and such other relief as the Court deems appropriate.

#### COUNT THREE

32. Plaintiff, Karen Santosuosso, repeats and incorporates the allegations contained in Paragraphs 1-21 and Counts One and Two as if set forth in full herein.

33. Had plaintiff not been terminated, she would have qualified for FMLA and FLA leave for the birth of her second child.



34. In violation of the provisions of the FMLA and the FLA, defendants terminated plaintiff, knowing that she would again be exercising her rights thereunder.

WHEREFORE, plaintiff, Karen Santosuosso, demands the following relief, jointly, severally and/or in the alternative, against all defendants; compensatory damages, punitive damages, attorneys fees and costs, interest and such other relief as the Court deems appropriate.

#### COUNT FOUR

35. Plaintiff, Karen Santosuosso, repeats and incorporates the allegations contained in

Paragraphs 1-21 and Counts One through Three as if set forth in full herein.

36. Plaintiff was a member of a protected class at the time of her first demotion from MCO to Center Manager, because she is female.

37. Plaintiff was qualified for the position of MCO.

38. Defendants demoted plaintiff and replaced her with a person outside of the protected class.

39. Defendants' stated reason for demoting plaintiff was nothing more than a pretext for discrimination.

40. Defendants' conduct constitutes discrimination in violation of the New Jersey Law Against Discrimination, N.J.S.A. §10:5-1, *et seq.*, hereinafter "NJLAD".

41. Defendants' actions deprived plaintiff of the ability to enjoy the benefits and privileges of her employment.

42. Defendants' conduct was further designed to and did cause plaintiff to suffer extreme emotional and physical distress, humiliation, embarrassment, damage to her self-confidence and financial damages.

Wherefore, plaintiff demands the following relief, jointly, severally and/or in the alternative, against all defendants; compensatory damages, punitive damages, equitable relief and damages, back pay, interest, costs of suit and such other relief as the Court deems appropriate.

#### COUNT FIVE

43. Plaintiff, Karen Santosuosso, repeats and incorporates the allegations contained in Paragraphs 1-21 and Counts One through Four as if set forth in full herein.
44. Plaintiff was a member of a protected class at the time of her second demotion from Center Manager to Staff Physical Therapist, because she is female and because she was pregnant at the time of her demotion.
45. Plaintiff was qualified for the position of Center Manager.
46. Plaintiff was temporarily replaced as the Center Manager of the Ventnor clinic by Frank McBride, and ultimately the position was filled by another male who was apparently promised a Center Manager position a year earlier.
47. Defendants' stated reason for demoting plaintiff was nothing more than a pretext for discrimination.
48. Defendants' conduct constitutes discrimination in violation of the NJLAD.
49. Defendants' actions deprived plaintiff of the ability to enjoy the benefits and privileges of her employment.
50. Defendants' conduct was further designed to and did cause plaintiff to suffer extreme emotional and physical distress, humiliation, embarrassment, damage to her self-confidence and financial damages.

Wherefore, plaintiff demands the following relief, jointly, severally and/or in the alternative, against all defendants; compensatory damages, punitive damages, equitable relief and damages, back pay, interest, costs of suit and such other relief as the Court deems appropriate.

#### COUNT SIX

51. Plaintiff, Karen Santosuosso, repeats and incorporates the allegations contained in Paragraphs 1-21 and Counts One through Five as if set forth in full herein.
52. Plaintiff was a member of a protected class at the time of her termination from employment with defendant NovaCare Rehabilitation, because she is female and because she was pregnant at the time of her termination.
53. Defendants' stated reason for terminating plaintiff was nothing more than a pretext for discrimination.
54. Defendants' conduct constitutes discrimination in violation of the NJLAD.
55. Defendants' actions deprived plaintiff of the ability to enjoy the benefits and privileges of her employment.
56. Defendants' conduct was further designed to and did cause plaintiff to suffer extreme emotional and physical distress, humiliation, embarrassment, damage to her self-confidence and financial damages.

Wherefore, plaintiff demands the following relief, jointly, severally and/or in the alternative, against all defendants; compensatory damages, punitive damages, equitable relief and damages, back pay, interest, costs of suit and such other relief as the Court deems appropriate.

#### COUNT SEVEN

57. Plaintiff, Karen Santosuosso, repeats and incorporates the allegations contained in Paragraphs 1-21 and Counts through Six as if set forth in full herein.

58. Although plaintiff was more experienced than Frank McBride, when Mr. McBride replaced her as the MCO, he was compensated at a higher rate than plaintiff.

59. Plaintiff did not receive the same rate of pay as Frank McBride because she is female.

60. This differential in rate of pay constitutes disparate treatment under the NJLAD.

Wherefore, plaintiff demands the following relief, jointly, severally and/or in the alternative, against all defendants; compensatory damages, punitive damages, equitable relief and damages, back pay, interest, costs of suit and such other relief as the Court deems appropriate.

#### COUNT EIGHT

61. Plaintiff, Karen Santosuosso, repeats and incorporates the allegations contained in Paragraphs 1-21 and Counts One through Seven as if set forth in full herein.

62. Defendant Joseph Derella was plaintiff's supervisor when plaintiff was demoted and ultimately terminated.

63. Defendant Joseph Derella made the decisions to demote and ultimately to terminate plaintiff.

64. Defendant Joseph Derella also made the decision to compensate Mr. McBride at a higher rate of pay than plaintiff for filling the MCO position.

65. Said conduct on behalf of defendant Derella subjects him to individual liability under the NJLAD.

Wherefore, plaintiff demands the following relief, jointly, severally and/or in the alternative, against defendant Derella; compensatory damages, punitive damages, equitable relief and damages, back pay, interest, costs of suit and such other relief as the Court deems appropriate.

#### COUNT NINE

66. Plaintiff, Karen Santosuosso, repeats and incorporates the allegations contained in Paragraphs 1-21 and Counts One through Eight as if set forth in full herein.

67. Defendants Novacare Rehabilitation and Select Medical Corporation are strictly liable for the discriminatory actions of their supervisors.

Wherefore, plaintiff demands the following relief, jointly, severally and/or in the alternative, against all defendants; compensatory damages, punitive damages, equitable relief and damages, back pay, interest, costs of suit and such other relief as the Court deems appropriate.

#### COUNT TEN

68. Plaintiff, Karen Santosuosso, repeats and incorporates the allegations contained in Paragraphs 1-21 and Counts One through Nine as if set forth in full herein.

69. The statement that plaintiff falsified a patient chart is a false statement of fact about the plaintiff, which was published by defendants to at least one former co-worker of the plaintiff.

70. Said publication of this false statement constitutes defamation.

71. As a result of said defamation, plaintiff has suffered injury to her reputation and has been caused to suffer extreme emotional and physical distress, humiliation, embarrassment, damage to her self-confidence and financial damages.

Wherefore, plaintiff demands the following relief, jointly, severally and/or in the alternative, against all defendants; compensatory damages, punitive damages, equitable relief and damages, back pay, interest, costs of suit and such other relief as the Court deems appropriate.

#### JURY DEMAND

Trial by jury is hereby demanded as to all issues set forth herein.

**NOTICE OF TRIAL COUNSEL**

PLEASE BE NOTIFIED that pursuant to Rule 4:25-4, Russell L. Lichtenstein, Esquire, is hereby designated as trial counsel in the above-captioned litigation on behalf of the firm of Cooper Levenson April Niedelman & Wagenheim, P.A.

**CERTIFICATION PURSUANT TO RULE 4:5-1**

The undersigned, Stephanie E. Farrell, certifies on behalf of the above named plaintiff as follows:

1. I am an attorney admitted to practice law in the State of New Jersey, with the firm of Cooper Levenson April Niedelman & Wagenheim, P.A., counsel for the above named plaintiff.
2. The matter in controversy in this matter is not the subject of any other action pending in any Court or of a pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated.
3. At this time, there are no other parties who should be joined in this action.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

COOPER LEVENSON APRIL  
NIEDELMAN & WAGENHEIM, P.A.

By:   
STEPHANIE E. FARRELL, ESQUIRE  
Attorneys for Plaintiff Karen Santosuosso

DATED: 5/13/04

CPAC:416206.1

MAY-18-2004 16:29

COOPER LEVENSON

6093440939

P.15



# **CIVIL CASE INFORMATION STATEMENT (CIS)**

Use for initial Law Division-Civil Part pleadings (not motions) under Rule 4:5-1.  
Pleading will be rejected for filing, under Rule 1:5-6(c), if information above the black bar is not completed or if attorney's signature is not affixed.

FOR USE BY CLERK'S OFFICE ONLY

PAYMENT TYPE: CK CG CA

CHG/CK NO.:

AMOUNT:

OVERPAYMENT:

BATCH NUMBER:

 ATTORNEY/PRO SE NAME  
 Russell L. Lichtenstein, Esquire

 TELEPHONE NUMBER  
 (609) 344-3161

 COUNTY OF VENUE  
 Atlantic

 FIRM NAME (If Applicable)  
 Cooper Levenson April Niedelman & Wagenheim

DOCKET NUMBER (When Available)

 OFFICE ADDRESS  
 1125 Atlantic Avenue  
 Third Floor  
 Atlantic City, N.J. 08401

 DOCUMENT TYPE  
 Complaint

 JURY DEMAND: ☒ YES ☐ NO

 NAME OF PARTY (e.g. John Doe, Plaintiff)  
 Karen Santosuosso

 CAPTION  
 Karen Santosuosso v. Novacare Rehabilitation, Select Medical Corporation,  
 Joseph Derella, individually and John Does 1-10 (fictitious names whether they  
 be individuals, partnerships, corporations or otherwise, present identities unknown)

 CASE TYPE NUMBER  
 (See reverse side  
 for listing):  
 618

 IS THIS A PROFESSIONAL MALPRACTICE CASE? ☐ YES ☒ NO  
 IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53A-27 AND APPLICABLE CASE LAW  
 REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.

 RELATED CASES  
 PENDING?  
☐ Yes ☒ No

 IF YES, LIST DOCKET  
 NUMBERS

 DO YOU ANTICIPATE ADDING ANY  
 PARTIES (arising out of same  
 transaction or occurrence)? ☐ Yes ☒ No

 NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY, IF KNOWN  
☐ NONE ☒ UNKNOWN

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.

## CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

 A. DO PARTIES HAVE A CURRENT,  
 PAST OR RECURRENT  
 RELATIONSHIP? ☒ Yes ☐ No

 IF YES, IS THAT  
 RELATIONSHIP ☒ EMPLOYER-EMPLOYEE ☐ FRIEND/NEIGHBOR ☐ OTHER (explain) \_\_\_\_\_  
☐ FAMILIAL ☐ BUSINESS

 B. DOES THE STATUTE GOVERNING THIS  
 CASE PROVIDE FOR PAYMENT OF FEES  
 BY THE LOSING PARTY? ☒ YES ☐ NO

 USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS  
 THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION:

 DO YOU OR YOUR CLIENT NEED ANY  
 DISABILITY ACCOMMODATIONS?

☐ Yes ☒ No

 IF YES, PLEASE IDENTIFY THE  
 REQUESTED ACCOMMODATION: \_\_\_\_\_

WILL AN INTERPRETER BE NEEDED?

☐ Yes ☒ No

IF YES, FOR WHAT LANGUAGE? \_\_\_\_\_

ATTORNEY SIGNATURE

SIDE 2



# CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under Rule 4:5-1

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

## Track I - 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY
- 502 BOOK ACCOUNT
- 503 COMMERCIAL TRANSACTION
- 505 OTHER INSURANCE CLAIM (INCLUDING DECLARATORY JUDGMENT ACTIONS)
- 506 PIP COVERAGE
- 510 UM OR UIM CLAIM
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 599 CONTRACT
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (SUMMARY ACTION)

## Track II - 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 602 ASSAULT AND BATTERY
- 603 AUTO NEGLIGENCE - PERSONAL INJURY
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
- 699 TORT - OTHER

## Track III - 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER/CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

## Track IV - Active Case Management by Individual Judge/450 days' discovery.

- 156 ENVIRONMENTAL COVERAGE LITIGATION
- 234 FRT PLYWOOD LITIGATION
- 245 ACTIONS UNDER FEDERAL Y2K ACT
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 613 REPETITIVE STRESS SYNDROME
- 701 ACTIONS IN LIEU OF PREROGATIVE WRIT

## Mass Tort (Track IV)

- |                |                          |
|----------------|--------------------------|
| 240 DIET DRUG  | 601 ASBESTOS             |
| 241 TOBACCO    | 612 BLOOD-CLOTting SERUM |
| 243 LATEX      | 702 LEAD PAINT           |
| 246 REZULIN    |                          |
| 247 PROPULSID  |                          |
| 248 CIBA GEIGY |                          |
| 264 PPA        |                          |

999 OTHER (Briefly describe nature of action)

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."